

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0325

**Sales and Use Tax
For Tax Years 2004**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales and Use—Helicopter Purchase

Authority: IC 6-2.5-5-8; IC 6-2.5-5-27; 45 IAC 2.2-5-15; Black's Law Dictionary (6th ed. 1990)

Taxpayer protests the imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer is a limited liability company, wholly-owned by a single individual, which purchased a helicopter but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the helicopter was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the helicopter and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the helicopter. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the helicopter. Taxpayer protests the assessment. Further facts will be supplied as required.

I. Sales and Use—Helicopter Purchase

DISCUSSION

Taxpayer purchased a helicopter and claimed a sales tax exemption on the purchase price. The Department determined that taxpayer did not qualify for the exemption and issued a proposed assessment on the purchase of the helicopter. Taxpayer protests the denial of the claim for exemption.

The exemption is explained in 45 IAC 2.2-5-15, which states:

- (a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling,

- renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.
- (b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:
- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
 - (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
 - (3) The property is resold, rented or leased in the same form in which it was purchased
- (c) Application of general rule.
- (1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.
 - (2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.
 - (3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it is leasing the helicopter in the regular course of its business and so qualifies for the exemption. Taxpayer refers to the agreement it signed along with another party to lease the helicopter. The lessee was the same business which sold the helicopter to taxpayer. Taxpayer states that the lease is evidence that it purchased the helicopter for the purpose of leasing it to others.

The Department notes that the lease agreement is dated April 16, 2004, while the helicopter was not delivered to taxpayer until November 2004. Even then, the first leasing activity by the lessee under the leasing agreement signed in April 2004 did not take place until May 2005. 45 IAC 2.2-5-15(C)(2) states that the purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of its business. The lack of any leasing activity for over a year under this lease shows that this lease does not satisfy the requirements of 45 IAC 2.2-5-15(c)(2). This lease does not support taxpayer's position that it was in the business of renting or leasing the helicopter.

Next, taxpayer refers to several instances when it rented the aircraft to the individual who owns taxpayer. Taxpayer explains that the member would transport customers for an hourly rate. No rental or leasing agreements or any other materials establishing that the pilot/owner of taxpayer was in the business of public transportation were provided in support of this position. Taxpayer believes that this qualifies as renting or leasing for purposes of the rental exemption. Taxpayer has not provided any leasing or rental agreements between taxpayer and taxpayer's owner (the

pilot) establishing the rate and terms of rental or leasing. Taxpayer did not remit sales tax on the rental activity it had with the individual who owns taxpayer.

Taxpayer believes that the pilot was involved in public transportation and therefore was exempt from sales tax on the rental activity. The public transportation exemption is found at IC 6-2.5-5-27, which states:

Transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

The individual who owns the taxpayer and pilots the helicopter is licensed under Part 91 of the Federal Aviation Administration's (FAA) regulations. Pilots licensed for public transportation are licensed under Part 135. Taxpayer states that the pilot in question was working towards his Part 135 certification. Since the pilot did not hold a public transportation license from the FAA, he did not qualify for the public transportation exemption in IC 6-2.5-27.

Since the use of the helicopter by the pilot/owner of taxpayer did not qualify for the public transportation exemption, sales tax should have been collected on the pilot's use of the helicopter. Black's Law Dictionary, defines an arms-length transaction as:

Said of a transaction negotiated by unrelated parties, each acting in his or her own self interest; the basis for a fair market value determination. A transaction in good faith in the ordinary course of business by parties with independent interests. Commonly applied in areas of taxation when there are dealings between related corporations, *e.g.* parent and subsidiary.

...

Black's Law Dictionary, 109 (6th ed. 1990)

Since sales tax was not collected on the pilot's use of the helicopter, and no leasing or rental agreements between taxpayer and its owner were signed, these uses of the helicopter by the same individual who owns taxpayer do not rise to the level of arms-length transactions. Since these were not arms-length transactions, the pilot/taxpayer owner's use of the helicopter constitutes use of the helicopter by the purchaser. 45 IAC 2.2-5-15(C)(1) explains that the rental/leasing exemption does not apply if the purchaser uses the property. Here, the owner used the property and does not qualify for the exemption.

Alternately, in its protest correspondence with the Department, taxpayer claims that it was itself involved in public transportation, via the leasing of the helicopter to its sole member/owner who then flew his own paying customers. This was not public transportation on the part of the taxpayer. Even when viewed in the light most favorable to taxpayer's argument, taxpayer was renting the helicopter to an individual. It was not transporting anyone. Rather, it was renting the helicopter to someone who claims to transport others. The Department has not received any documentation to suggest that taxpayer is in the business of public transportation. As previously explained, IC 6-2.5-5-27 provides that transactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property. Here, the

person which acquired the property (taxpayer) did not provide public transportation, therefore it does not qualify for the public transportation exemption.

Taxpayer objects that it obtained a Revenue Ruling from the Department which approved of taxpayer's arrangement and that this ruling prohibits the Department from now charging tax on the purchase of the helicopter. Taxpayer states that the ruling specifically approved of the leasing to either Part 91 or Part 135 operators. This is not what the ruling states. The ruling has a "Statement of Facts" which explains the background of the situation. In this section, the ruling explains that taxpayer's leasing agreement contains language stating that the lessee must comply with Part 91 and/or Part 135. The Department's actual ruling on this issue states in its entirety:

The Department rules that the taxpayer's purchase of the helicopter for the purpose of leasing is exempt from sales/use tax under I.C. 6-2.5-5-8, which exempts property acquired for resale, rental, or leasing in the course of one's business, providing that such helicopter was purchased in the regular course of the taxpayer's business and the form of the helicopter was not altered.

The Department did not endorse taxpayer's inclusion of Part 91 as use in public transportation. The ruling merely states that taxpayer's purchase is exempt providing that the circumstances satisfy the requirements. As previously explained, the circumstances do not qualify for the leasing exemption.

The second issue in the ruling explains the Department's decision regarding the lessee in the lease agreement. The Department ruled that the lessee's activities would qualify for the public transportation exemption if it was predominantly engaged in public transportation. As previously explained, the lessee did not lease the helicopter for over a year from the date the agreement was signed, and so the leasing agreement does not support taxpayer's claim for exemption on those grounds. Whether or not the lessee in the agreement was engaged in public transportation but this is ultimately irrelevant since the lessee did not use the helicopter at issue for public transportation for over a year. The ruling did not address the use of the helicopter by the individual who owned taxpayer.

In conclusion, the lease taxpayer had with its lessee does not support taxpayer's claim for exemption. The total lack of leasing activity under that lease for over a year clearly does not qualify for the exemption found in 45 IAC 2.2-5-15. The activity which did take place did not qualify for the public transportation exemption due to the fact that the pilot did not hold the necessary license from the FAA, and sales tax should have been collected on that activity. The use of the helicopter by the same individual who owns taxpayer was not performed at arm's length and therefore constitutes use of the property by the purchaser, which disqualifies the purchase from eligibility for the exemption found in 45 IAC 2.2-5-15. The Revenue Ruling taxpayer received from the Department only states that the purchase would qualify for the exemption found in IC 6-2.5-5-8 if the proper conditions were met. The proper conditions were not met.

FINDING

Taxpayer's protest is denied.
WL/JM/DK 062002